

Discrimination: An Interdisciplinary Analysis*

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ABSTRACT. Discrimination on the basis of race, sex, national origin, etc., is often morally wrong. But should such behaviour be proscribed by legislation, and penalized by fines or jail sentences? This paper argues that such enactments are incompatible with the law of free association, and with the concept of economic liberty and civil rights.

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Discrimination has been treated by large parts of the academic community as though it were not amenable to logical analysis, be it economic, ethical or political; as though the very consideration of alternative viewpoints were somehow unsavory. The philosophy of "feminism," "human rights," "multiculturalism," and "political correctness" have so permeated intellectual discussion that criticisms of the mainstream view take on an aura of illegitimacy at the outset, even before arguments are heard in their behalf. This is highly unfortunate. If nothing else, John Stuart Mill's "On Liberty" should give us pause before closing our minds to alternative perspectives.

At one time in our recent history, the term "discriminating" had a positive value. It was a compliment. To say that a person was discriminating was to say that he was able to make fine distinctions. Today, of course, to say that someone is discriminating is to charge him with prejudice. This modern view is embodied in the so-called human rights codes of society, wherein it is illegal to discriminate against people on the basis of race, religion, sex, national origin, handicap, sexual preference, age, etc. Discrimination now carries a legal penalty — a fine, and even a jail sentence to back up the prohibition.

I. Classical liberalism

Let us then consider an alternative philosophical treatment of discrimination, sometimes known as classical liberalism.¹ It asks one and only one question: "When is the use of (state) force justified?" and gives one and only one answer: "Only in response to a prior rights violation." As such, this view must be sharply distinguished from theories of ethics. This is crucial, because there is all the difference in the

world between claiming that a person should not be imprisoned or legally penalized for engaging in act X, and claiming that act X is moral. It is no contradiction to oppose the criminalization of discrimination on the basis of race, sex, national origin, etc., while at the same time declaring that such behavior is immoral and unethical. And that, indeed, is that stance maintained in the present paper. Discrimination is defended, here, in the very limited sense that perpetrators should not be incarcerated, fined, or otherwise interfered with by governmental authorities. The present writer, however, finds such behavior odious, and morally repugnant in the extreme.

Classical liberalism is predicated on the premise that we each own our own persons; we are sovereign over ourselves. We have property rights over our own bodies, and in the things we purchase, or receive through any other legitimate mode, such as gifts, inheritance, gambling, etc. (Nozick, 1974, pp. 149–182). Intrinsic to this way of looking at things is that there are boundaries. My fist ends here, your chin begins there. If the former touches the latter, without being invited to do so, I have invaded you. The essence of this philosophy is that any barrier invasions such as rape, murder, theft, trespass or fraud are strictly prohibited.

Conversely, within one's own sphere the individual is free to do anything he wishes, provided only that he does not violate the rights or borders of others. Conceivably, people might be hurt deeply by friendship or patronage withheld, but it is the individual's right to withhold benefits of this sort, since such acts of omission cannot rationally be interpreted as a boundary crossing. As long as an individual's person or property is not invaded, no indictable offence has occurred and, accordingly, no penalty — no fine or jail sentence — should ensue.

From this philosophy is derived "the law of association," namely, that all interaction between free, sovereign, independent individuals should be voluntary and on the basis of mutual consent. On issues of pornography, prostitution, free speech and drugs, the well-known phrase "anything between consenting adults should be allowed" demonstrates this philosophy. The classical liberal variant of this expression, in Robert Nozick's (1974) felicitous phraseology, is that "all capitalist acts between consenting adults" should likewise be allowed.

All acts, whether personal or commercial, should

take place on the basis of mutuality. From this we derive that discrimination too is a right and, therefore, it should not be a criminal act to indulge — on whatever basis one chooses. But here it is important to emphasize that what is meant by "discriminate" is something very particular. It is to ignore, avoid, evade, have nothing to do with, another person. It most certainly does not imply the "right" to lynch or beat up or enslave or commit assault and battery upon someone from a despised group. If I don't like bald people with beards who wear glasses, for example, I don't have to have anything to do with them. I shouldn't be fined or jailed for refraining from dealing with them, according to this philosophy. On the other hand, I can't approach such people and punch them in the nose. I should be incarcerated if I indulge any acts of this sort. In other words, I can do anything I wish to people against whom I hold prejudices — provided only that I do not engage in border crossings, or violation of their space (persons and property rights). I can "cut them dead" (socially and commercially), but I cannot commit even the slightest violence against them.

Is it "nice" to discriminate against people? Is it "reasonable" to prejudge an entire group or persons, based on negative experiences with a small sample? Certainly not.² In the popular belief, discriminators are hateful and wicked for not wanting to have anything to do with certain groups of people. As well, they are deemed illogical in that they over-generalize from a small sample to an entire population.³ However, the issue presently facing us is not the moral or scientific status of discriminators. We are primarily concerned whether the individual has a right to act in this way, and with the economic implications of this philosophy, not with whether or not it is nice or reasonable for him to do so.

II. Human rights

Let us examine the "human rights" viewpoint in light of classical liberalism. Current "human rights" legislation only applies to commerce and sometimes to clubs, but not to personal interactions. This is puzzling because the advocates of such laws usually regard interpersonal relations as more important than commerce. Contemplate the fact that all

heterosexuals discriminate against half the population in the choice of sexual partners. As do homosexuals. It is only bi-sexuals who are not guilty of this practice. (But most bisexuals presumably discriminate on other criteria: beauty, health, youth, wealth, honesty, sense of humour, common interests, personality, etc.) Therefore, if we consistently carry through on the anti-discrimination philosophy, we ought to punish everyone except bi-sexuals. Or consider marriage patterns. There is very little inter-marriage, relative to the totals, across racial, ethnic and religious categories. From this one can deduce that racism in general, or discrimination in particular, plays a significant role in marriage choices. To be consistent with the underlying philosophy of "human rights" advocates, when people apply for marriage licenses they should be asked: "Have you dated people from other backgrounds; did you give them a fair chance?" If not, no marriage should be permitted. Certainly, friendship patterns are based on all sorts of discriminatory patterns. Is this wrong? Perhaps; it might well be. Should this be punished by law? Hardly.

Some people maintain that we should enforce anti-discrimination legislation in commerce but not in personal relations⁴ because a store, office, factory or workplace is "open to the public," while no such stricture applies to friendship and other personal relationships. Such a claim is hard to defend, however. A store could conceivably be open only to the blond blue-eyed public — all others are advised go elsewhere — or to the left-handed redheaded public — or base its clientele on whatever criterion it wishes to employ. There is no logical reason why an offer to commercially interact with some people should be interpreted as an offer to business with all.

Secondly, "human rights" legislation is applied in a biased way. For example, with regard to considerations of national origin, many countries discriminate against foreign investment and treat the domestic variety more favorably. Tariffs discriminate against foreigners, so do immigration policies. University students from other nations commonly have to pay more for their education than citizens of the host country. These are all forms of discrimination based on national origin. And yet the response to these rights violations on the part of the human rights advocates, and civil libertarians, is curiously muted. This is difficult to reconcile with their position, since

in other contexts they single out discrimination in business for particular opprobrium.

Let us consider some other examples. Women's consciousness-raising groups are not open to men, while legal sanctions have been applied against men's only private clubs. Black Muslims do not allow white people to join them in prayer.⁵ Similarly, Sikhs and Orthodox Jews, among many other religious groups, confine their prayer meetings to like-minded people. Boycotts of lettuce, grapes and other such union inspired activities certainly discriminate against people who are despised, at least within parts of the counterculture. The Brownies, the Girl Guides, Boy Scouts, the YMCA, the YWCA, the Young Men's Hebrew Association or the Young Women's Hebrew Association, all discriminate on the basis of gender.

While some of these examples may seem frivolous, there is an important point to be made. Non-discrimination is put forth as a basic human right. How, then, can there be exceptions? Surely, it is a basic human right not to be raped. Do we have exceptions incorporated into the law? No; the very idea is ludicrous. It is likewise a basic human right not to be murdered. Again, there are no exceptions. If it is a basic human right, we infer, exceptions are intolerable. The fact that exceptions to the laws prohibiting discrimination are not only intolerable but are instead widely espoused, even by defenders of the philosophy, indicates that is not at all a basic human right not to be "victimized" by discrimination.

As well, many of these distinctions have been made with a certain amount of hypocrisy. Women's consciousness raising groups are widely considered to be properly closed to men, but male-only private clubs have been subjected to intensive governmental pressure to change their membership practices. In many cities, women are allowed to join the Young Men's Christian Association, but men are not allowed to enroll in the Young Women's Christian Association. On many university campuses, there is provision for blacks-only dormitories and cafeterias; providing the same amenities for whites would be widely seen as anathema. At one major Pacific coast university, the administration had organized a homosexual appreciation week; when students organized a heterosexual appreciation week, they were punished by university authorities. In the U.S. House of

Representatives, there is a widely recognized Black Caucus; no such white counterpart can even be contemplated, given the likely outraged response. "Black is beautiful" is a respected rallying cry for a significant minority of the population; anyone attempting to promote the counterpart "white is beautiful" would be summarily dismissed as a racist.

A possible defence of this state of affairs is that it is justified for the downtrodden and denigrated minority to discriminate against the majority, but not for the latter to undertake such actions with regard to the former. There is one obvious difficulty with such a response: it cannot be made compatible with the view that non-discrimination is a basic human right. If it were so, then no one would have the right to discriminate against anyone at any time, for any reason.⁶

Another important point to consider is the backlash that special government treatment for minority groups has engendered. States Thomas Sowell (1990, p. 28): "One of the clearly undesired and uncontrolled consequences of preferential policies has been a backlash by non-preferred groups. This backlash has ranged from campus racial incidents in the United States to a bloody civil war in Sri Lanka." In Canada, Marc Lepine entered the engineering school of the University of Montreal, and at gunpoint forcibly separated the male and the female students. Whereupon this person, who had previously complained about affirmative action benefits of women, cold bloodedly murdered over a dozen co-eds. Feminists in Canada and elsewhere have unsuccessfully attempted to deny any connection whatsoever between this brutal and dastardly act, on the one hand, and resentment against governmentally imposed preferential treatment for women on the other.

Why only include race, religion, sex, national origin, handicap, sexual preference, and age among the categories upon which it is illegitimate to discriminate? Why not also consider under this rubric people who are fat, drunk, stupid, smelly, ugly, short, bald, color blind, tone deaf, humorless? One response to this *reductio ad absurdum* might be that the presently legally protected categories are justified in terms of one's ability to change. If a person cannot alter his condition, it becomes impermissible to discriminate against him; if he can, it is not permissible.

But there are difficulties with this rejoinder. First, why is it morally relevant? Even if an inveterate rapist for some reason could not change his desire to indulge in such activity, it would still be just to visit physically violent sanctions against him to make him cease and desist. Second, this argument cannot possibly explain the present distinction between categories which are and which are not legally protected from discrimination. For example, changes in religion are relatively easy to incorporate, at least in comparison to an alteration in height. And yet discrimination on the basis of religious belief is commonly proscribed, but not that based on bodily size.

Another response might be that such categorization is made on the basis of the level of suffering undergone by the minority group. But those who are fat, drunk, stupid, smelly, ugly, short, bald are also denigrated. Surely these people suffer just as much if not more from discrimination as do some of those who are not legally recognized as "minorities."

Many so-called human rights advocates would happily add these additional categories to the list of people against whom it would be illegal to discriminate. While a short fat bald man with splotchy skin, glasses and a squeaky voice can make an important contribution to society, he does not look the part, and is usually reimbursed and befriended accordingly. Maybe we should incorporate into the law a prohibition against discriminating against such persons. However, if we keep adding to the list, no one in our society will be able to interact on *anyone* on a truly voluntary basis.

III. Harm from discrimination?

Why do the "human rights" advocates champion these ideas? One possibility may be that they identify with and want to protect the underdog against suffering. But there is a strong objection to this view: the underdog does not greatly suffer — at least in the economic sense — from private discrimination. To be sure, there is some harm which does befall a minority group which is the target of discriminatory behavior. Certainly, such groups of people are better off if the majority is favorable to them, or at least views them with indifference. But the injury is minimal. It could not be otherwise, given that Jews

and Chinese have long been amongst the groups most highly discriminated against in our society, and yet have incomes far in excess of the average (Sowell, 1981a; 1981b; 1983).

In order to see why this is so, it is incumbent upon us to briefly review the economics of boycotts, of which discrimination is only a particular case. The reason boycotts are almost always relatively unsuccessful (even when engaged in on the part of millions of people, over many years, such as in the case of South Africa) is because of the fail-safe mechanism which necessarily accompanies them (Abedian and Standish, 1985; Hutt, 1964). To the extent that a boycott is successful, it worsens the economic condition of the "victimized" group — at least initially. For example, if the boycott is through employment — the majority will not hire the minority — the wages of the minority decrease, and/or their unemployment rate increases. If the majority will not sell food to them, the price they become willing to pay for these items rises. As this process continues, their plight worsens. But, as their condition declines, it becomes more and more financially tempting on the part of both boycotters and non-boycotters to deal with these targets of the discriminatory behaviour, in spite of the initial prejudice which led to the boycott in the first place. For example, if racial prejudice leads to whites refusing to hire blacks, thus lowering their wage levels, "this would mean an opportunity for some employers to reap unusually high profits by concentrating on hiring members of such low-wage groups. Even if employers of all other groups were too blinded by prejudice to seize this opportunity, it would leave a great opportunity for extra high profits by employers belonging to the same ethnic group" (Sowell, 1975, p. 165). A successful boycott, in other words, carries within it the very seeds of its ultimate failure.⁷

But what of the plight of the minority during this process? Are they not grievously harmed in the interim? Not at all. So well does this "fail safe" mechanism operate that it is all but impossible to find evidence of the incidence of such boycotts. That is, it cannot be shown that there are greater profits to be earned in hiring such minority members, as there would be were they being victimized by discriminatory boycotts. "... the experience of employers hiring members of an ethnic group that has lower earning and/or higher unemployment rates does not

show remarkable success, and in many cases elaborate and costly programs have produced very meager results, even when subsidized by large government grants." (Sowell, 1975, p. 165)

Abella (1984) claims to have shown harmful effects on the well-being of minority groups as a result of discrimination, but her methodology is questionable on several grounds (Block and Walker, 1985). For example, she allocates the entire difference between black and white earnings (that cannot be statistically explained by quantifiable variables) to discrimination, thus ignoring other possible sociological and cultural differences which cannot be so easily quantified; to wit, she regards years of schooling as a homogeneous good, even though there are great disparities in the quality of schooling received across racial categories, even though the subject specializations are widely disparate — and correlated with income. That is to say, blacks are often concentrated in fields with lower average earnings.

Perhaps the best refutation of the methodology has been penned by Sowell (1990, p. 25), who states:

When two groups differ in some way — in income for example — and 20% of that difference is eliminated by holding constant some factor *x* (years of education, for instance) then in a purely definitional sense statisticians say that factor *x* "explains" 20% of the difference between the groups. . .

The potential for misleading explanations can be illustrated with a simple example. Shoe size undoubtedly correlates with test scores on advanced mathematics examinations, in the sense that people with size-3 shoes probably cannot on average, answer as many questions as correctly as people with size-12 shoes — the former being much more likely to be young children and the latter more likely to be older children or adults. Thus shoe size "explains" part of the math-score difference — in the special sense in which statisticians use the word. But nobody can expect to do better on a math test by wearing larger shoes on the day it is taken. In the real sense of the word, shoe size *explains* nothing.

When a statistician testifies in court that his data can "explain" only 40% of income disparities between groups by "controlling" for age, education, urbanization, and whatever other variable may be cited, the judge and jury may not realize how little the words "explain" and "control" mean in this context. Judge and jury may conclude the other 60% must represent discrimination. But virtually no statistical study can control for all the relevant variables simultaneously, because the in-depth data, especially along qualitative dimensions, are often simply not available. By controlling

for the available variables and implicitly assuming the unaccounted-for variables do not differ significantly between groups, one can generate considerable residual "unexplained" statistical disparity. It is arbitrary to call that residual "discrimination."

Looked at another way, groups with visible, quantifiable disadvantages often have other, not-so-visible, not-so-quantifiable disadvantages as well. If statistics manage to capture the effect of the first kinds of disadvantages, the effects of the second kind become part of an unexplained residual. It is equating that residual with discrimination that is the fatal leap in logic.

IV. The economics of the "pay gap"

There is an objection often put forth against our claim that the people subjected to private discriminatory behaviour are not harmed by it. Are not the wages, salaries and incomes of women reduced because of economic discrimination against them? The so-called wage gap is offered as contrary evidence to our thesis. The fact is that at present the female/male income ratio is about 0.65. This ratio has been rising very slightly for the last few years, but over the past few decades has shown a great stability. (Block and Williams, 1981; Block and Walker, 1985; Paul, 1989; Levin, 1984; 1987). For every dollar the male earns, the female earns 65 cents. Isn't this evidence of actual harm not based on law or government or violence or coercion or boundary trespasses but rather on private discrimination? Paradoxically, the answer is No.

There are two reasons for taking this stance. First of all, there is the statistical explanation. Yes, the average wage of all females divided by the average wage of all males is 0.65 — there is no dispute about that. But this gross statistic hides more than it reveals. As it turns out, the explanation for this state of affairs is not at all discrimination against women, but rather the asymmetrical effects of the institution of marriage on male and female incomes. Matrimony is strongly associated with increased male incomes and decreased female incomes. The so-called "pay gap" of 35% associated with the wage ratio of 0.65 is almost entirely due to the asymmetrical effects of marriage. The plain fact of the matter is that the division of housework, child-care, shopping, cooking and other such activities is very unequal within most marriages. As well, married

women's attachment to the labor force is vastly below that of men (Hoffmann and Reed, 1982; Sowell, 1984).

This can be shown in two ways. First, segregate the population by marital status, and derive a female/male income ratio for each sub-category. Block and Walker (1985a,b) divided their sample, into the ever and the never married. (The former classification consists of married, divorced, separated and widowed; the latter, as its name implies, is compared only of those people who have never been married.) When calculated in this manner, the ratio for the ever marrieds falls to below 0.40; that for the never marrieds rises to unity. In other words, the "pay gap" increases from 35% for all females to a truly horrendous 60% for the ever married females. By contrast, the pay gap for all females decreases from the 35% level to virtually zero for the never married females. Does this mean that the employer has a particular hatred for married women? This is the only interpretation consistent with the "feminist" mythology. However, contradictorily, in this view, the prejudiced male is supposed to favor married women, given, of course, that they are "barefoot, pregnant and in the kitchen." He is presumed to hate single women — those who do not marry, presumably because they have no respect for men and patriarchal institutions. But the statistical findings indicate the very opposite. When the data are broken down by marital status, it is not the single women, the never marrieds, who "suffer." Rather, it is the marrieds who do.

The ratio for full time employed never marrieds in Canada ranges between 82.9 and 109.8, depending upon date (1971 or 1981), and educational background. (Block and Walker, 1985, p. 51.) For never married persons aged 30 years old and above, Block and Walker (1982, p. 112) found a female-male income ratio of 0.992 for 1971; for comparable ever married, the ratio was 0.334. For U.S. data, Sowell (1984, p. 92) reports: "Women who remain single earn 91% of the income of men who remain single, in the age bracket from 25 to 64 years old. Nor can the other 9% automatically be attributed to employer discrimination, since women are typically not educated as often in such highly paid fields as mathematics, science, and engineering, nor attracted to physically taxing and well paid fields as construction work, lumberjacking, coal mining, and the like.

Moreover, the rise of unwed motherhood means that even among women who never married, the economic constraints of motherhood have not been entirely eliminated."

As it happens, the wage ratio of non-married males to married males is about the same as between all females and all males. Namely, there is a "gap" of some 35%. Interestingly, there have been no analysts who have come forth with the claim that this is due to discrimination. Does this finding indicate that employers discriminate against bachelors? No. It is due to accounting practices which are not designed for economic analysis. The married male has an "assistant" — in effect — helping him to earn that income. It is true that only his name appears on the check, but she is earning it too. She might have helped put him through college. She engages in all sorts of ancillary activities which contribute to his success. However, in the statistical accounts, she is not credited with helping to earn this money. She spends this money in many cases, but governmental statistical agencies typically do not take cognizance of the fact that she has helped to earn it.

It is thus erroneous to deduce from these statistics that discrimination can account for the male-female wage disparity. The reason women on average only earn 65% as much as males is because their productivity is only 65% of theirs. This is not necessarily due to any inherent economic weaknesses on their part, however. As we have seen, the explanation is marital status. According to the best statistical estimations, never married women and never married men have equal productivity, and thus equal salaries. Married women are only 65 percent as productive as men in the market on average because they specialize in raising children and taking care of the household. Even those women who have advanced degrees or training do not typically keep up with the least developments in their professions; at least, they do not do so as assiduously as their married male counterparts.

Now let us consider the second reason in favour of the marriage asymmetry explanation of the wage "gap," *vis-à-vis* the discrimination or exploitation hypothesis. Notice the logical implications of the discrimination model. Assume that the productivity of males and females is exactly equal to each other. Assume the productivity of both to be at the level of \$10 per hour.⁸ Suppose further that the wage for

males is \$10 and for females it's \$6.50 an hour, in order to maintain our ratio of 65%. Under these conditions, it would be as if the woman has a little sign on her lapel stating, "Hire me, and if you do I'll bring you an extra \$3.50 an hour in pure profit." If the employer hires a woman, he can keep this \$3.50, with no extra effort on his part. It goes without saying that all profit-maximizing employers would be vitally interested in discriminating in favour of additional returns. Without question, they would hire the women. But suppose that the employer is a sexist, who hires the man. If so, he will tend to go broke. His competitors, the employers who hire females, will be able to undersell and drive him to the wall.

It is ludicrous, economically speaking, to suppose that anything like this could long endure: that employers could discriminate against equally productive women, and yet remain in business for any appreciable amount of time. Yet, this is precisely the scenario implied by the discrimination hypothesis. Similarly, it is also an implication of this discrimination theory that profits would be positively correlated with the proportion of female employees, both across firms and industries. That is to say, if employers can really exploit women by paying them less — due to rampant discrimination — then they would earn more profits, the more women they have on their payrolls. But this, too, bespeaks economic illiteracy. Profits tend to equalize, *ceteris paribus*. If 50% profits can be earned in industry A, and 1% in B, then investment will tend to leave the latter for the former. But as capital leaves B, this raises the profit level to be derived there; similarly, as money comes flooding in to the greener pastures of A, it lowers returns. What will be the effect of a law that compels employer to pay "equal pay for work of equal value?" Suppose the law requires employers to pay women \$10 an hour when their productivity is really only worth \$6.50, on average. An employer would be very reluctant to hire such people. If he does, he will lose money on each employee he takes on; eventually he will be forced into bankruptcy. As a result, the unemployment rate for women will be higher than it would otherwise have been, in the absence of such pernicious legislation. This is precisely the same effect as that of the minimum wage law. It functions so as to price women out of the labor market.

